

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WA.No. 2061 of 2006()

AGAINST THE JUDGEMENT IN WPC.23783/2006

APPELLANT: PETITIONER

M/S.B.S.N.L., THIRUVANANTHAPURAM,
REP. BY ITS EXECUTIVE ENGINEER,
SRI.P.KAILASAM.

BY ADV. SMT.S.K.DEVI

RESPONDENTS: RESPONDENTS:

1. THE ASST.COMMISSIONER (KGST),
DEPARTMENT OF COMMERCIAL TAXES,
SPECIAL CIRCLE, THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REP. BY ITS FINANCE SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

SPECIAL GOVERNMENT PLEADER FOR TAXES SRI.V.V.ASHOKAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

.....
W.A. No. 2061 OF 2006
.....

Dated this the 29th May, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Appellant, M/s. B.S.N.L., Thiruvananthapuram is questioning the correctness or otherwise of the judgment delivered by the learned single Judge in W.P.(C) No. 23783 of 2006 dated 20th September, 2006 .

2. While disposing of the matter, the learned single Judge has merely directed the appellant to avail the alternate remedy provided under the K.G.S.T. Act, if, for any reason, the appellant is aggrieved by the orders of the assessment passed by the assessing authority.

3. It is needless to say that the Kerala General Sales Tax Act is independent code. The Act provides a complete machinery for assessment of tax and relief in respect of impugned or erroneous orders made by revenue. This court's interference while exercising its extra-ordinary jurisdiction can be exercised only in cases where there is infringement of fundamental rights are involved or if an order is passed by any authority who had no jurisdiction to pass such an order. Therefore, in our view, if for any reason, the assessee is aggrieved by the orders of assessment passed by the assessing authority and the demand notices issued thereunder, necessarily he has to question the same before the first appellate authority.

4. As we see from the prayers made in the Writ Petition, the challenge of the petitioner is only with regard to the orders of assessment passed by the assessing authority . If that is so, the petitioner is expected to question the said order before the appellate forum. For the aforesaid relief, the assessee cannot approach this court under Article 226 of the Constitution of India by bypassing the remedy provided under the statute. That is what the learned single Judge stated in the impugned judgment.

We do not see any error in the judgment delivered by the learned single Judge and therefore, no interference is called for in this appeal. However, we grant liberty to the appellant/petitioner to question the correctness or otherwise of the orders of assessment before the first appellate authority, if it so desires, within a month from today. If such an appeal is filed by the appellant/petitioner , the first appellate authority shall consider and dispose of the same, in accordance with law. All other contentions are left open.

Interlocutory Application Nos. 314 and 315 of 2007 are also disposed of.

**H.L. DATTU,
CHIEF JUSTICE.**

**K.T. SANKARAN,
JUDGE.**

lk/DK.